

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 6879

BILL NUMBER: HB 1226

NOTE PREPARED: Jan 27, 2010

BILL AMENDED: Jan 26, 2010

SUBJECT: Health and Medicaid Fraud Matters.

FIRST AUTHOR: Rep. Reske

FIRST SPONSOR:

BILL STATUS: CR Adopted - 1st House

FUNDS AFFECTED: X GENERAL
X DEDICATED
X FEDERAL

IMPACT: State

Summary of Legislation: (Amended) *Attorney General and Health Records:* This bill establishes procedures for the Attorney General to seize, secure, store, and destroy abandoned or at-risk health records and other records containing personally identifying information. It creates a Health Records and Personal Identifying Information Protection Trust Fund to pay for costs associated with securing and maintaining the records.

State-Administered Program Fraud Provisions: The bill allows the Office of the Secretary of Family and Social Services (FSSA) to exclude specified persons who engage in fraud or abuse from participating in the Medicaid program. It requires the FSSA to maintain a list of persons excluded from participating in the Medicaid Program and provide that list to specified persons.

Medicaid surety Bond Requirements: The bill also requires certain Medicaid providers or applicants to submit a surety bond to the Office of Medicaid Policy and Planning (OMPP) to be used for specified purposes before the provider may receive reimbursement.

Uniform Cease and Desist: The bill establishes a uniform procedure to allow a board of a regulated occupation to issue a cease and desist order to an unlicensed person who engages in an activity that requires a license. It also repeals and makes conforming changes concerning cease and desist and injunctions orders.

AG Opposition to License Surrender: The bill prohibits health professions licensing boards from accepting the surrender of a license if the Attorney General files an administrative action against the practitioner and opposes the surrender.

Revocation of Controlled Substances Permit: The bill also provides for automatic revocation of a Controlled Substances Advisory Commission Permit if a physician's license is revoked. (Current law requires a separate administrative process to take place if a physician's license is revoked.)

Identification Required to Dispense a Controlled Substance: The bill also provides that a pharmacist, pharmacy technician, or person authorized by a pharmacist to dispense a controlled substance may not dispense a controlled substance to a person who is not personally known to the pharmacist, pharmacy technician, or person authorized by a pharmacist to dispense a controlled substance unless the person taking possession of the controlled substance provides documented proof of the person's identification to the pharmacist, pharmacy technician, or person authorized by a pharmacist to dispense a controlled substance.

Effective Date: July 1, 2010.

Explanation of State Expenditures: (Revised) *State-Administered Program Fraud Provisions:* The bill would allow FSSA to exclude specified providers or persons who engage in fraud or abuse from participating in the Medicaid program. FSSA would be required to maintain a list of the providers excluded from Medicaid. The list is to be made available to other health care providers. The list could be maintained on the Indiana Health Coverage Programs web page. The Medicaid Fraud Unit operated by the Attorney General would be involved in the development of the list of excluded providers as the agency that investigates Medicaid provider fraud. The personnel resources needed to develop and maintain the list are not known at this time. FSSA would also need to promulgate rules prescribing how a provider that has been excluded from participation in Medicaid may be reinstated. Promulgation of rules is considered to be a routine administrative function that may be accomplished within the current level of resources available to the agency.

(Revised) *Surety Bond Requirement:* The bill would after July 1, 2010, require certain transportation and durable medical equipment (DME) applicants for Medicaid provider status to furnish with the application an authorized surety bond at a level to be determined by FSSA. Specified transportation and DME providers that are currently Medicaid providers would have until October 15, 2010, to provide FSSA with the required surety bond. The bill provides that if a surety bond does not meet the specified requirements, OMPP may revoke or deny the provider's billing privileges. If a lapse or gap in bond coverage occurs, OMPP is required to revoke the provider's billing privileges. The bill provides that OMPP may not reimburse a Medicaid provider for services provided during the lapse or gap in coverage. The level of resources required by FSSA and OMPP to implement the surety bond requirement for Medicaid providers is not known at this time. Medicaid administrative expenditures are generally matched by 50% federal funds.

Attorney General and Health Records: The Attorney General (AG) would require additional expenditure to carry out this provision. The AG would be able to apply to the Marion County Circuit Court to enforce any subpoenas issued. The AG would be able to notify persons if their medical records have been taken into possession. The AG would be entitled to costs of any enforcement action taken.

Medical records would have to be maintained in a depository the lesser of either three years or the remaining time on the storage of the records by a private medical professional in current law.

Uniform Cease and Desist: This provision may generate a minor increase in expenditures for the AG if more investigations involving professional licenses occur. Under current law, the AG already investigates complaints of the licensed professions and can currently enjoin an individual found in violation of licensing law.

The Professional Licensing Agency (PLA) is currently able to, or in conjunction with the AG, impose cease and desist orders on various professionals. This provision should affect PLA expenditures minimally.

Revocation of Controlled Substances Permit: This provision would speed up the process of removing a controlled substances permit certification from a person that has had their professional license revoked. The process should reduce the administrative expense to process two separate revocation proceedings.

Identification Required to Dispense a Controlled Substance: This provision should have no fiscal impact.

Explanation of State Revenues: (Revised) *Surety Bond Requirement:* By requiring surety bonds for specified Medicaid providers, OMPP could increase recoveries for overpayments and reimbursements made for fraudulent claims. OMPP estimated in FY 2008, that the total overpayment balance was in excess of \$24 M; the amount due from transportation and DME providers that meet the specifications in the bill is not known.

The bill would require specified transportation and DME Medicaid providers to furnish OMPP with an authorized surety bond before the provider can receive reimbursement. The Centers for Medicare and Medicaid Services (CMS) has estimated the average annual cost of a surety bond at 3% of its face value, or about \$1,500 for a \$50,000 bond. Generally, surety bond cost is related to individual factors relating to the bondholder's risk such as credit rating, length of time in business, or prior adverse actions, so bond prices would vary depending on the buyer and the amount of the bond required. If a transportation or DME Medicaid provider has had a criminal conviction, a civil judgement, or an exclusion action related to Medicaid provider services within the preceding 10 years, the bill requires an additional authorized surety bond as determined by OMPP.

(Revised) *Attorney General and Health Records-* This provision would set up the Health Records and Personal Identifying Information Protection Trust Fund to fund the AG's expenditures to carry out health record seizure, storage, and maintenance as required under the bill. Revenue would come from a \$5 fee to be assessed along with every disciplinary order imposed on a person by a professional board.

The amount of revenue this provision could generate in a given year is indeterminable and would depend on the number of disciplinary orders handed down by professional boards in the future. Professional boards and administrative law judges conducted approximately 800 disciplinary and appeal hearings in 2008. Based on the number of hearings held in 2008, annual income to the fund is likely to be less than \$4,000. The fund would be capped at \$75,000. If the fund exceeded \$75,000, the \$5 civil penalty imposition would cease until the fund balance went below \$75,000. The AG would administer the fund. Revenue in the fund would not revert to the state General Fund at the end of a state fiscal year.

(Revised) *Surety Bond Background Information:* State contracts with the managed care organizations (MCOs) currently require the organizations to provide a bond in the amount of \$1 M. It is not known how many other contracted Medicaid providers are required to provide a bond as a term of the contract. Medicare regulations require certain other providers to furnish surety bonds for Medicare purposes; home health agencies are required to furnish surety bonds to Medicare and Medicaid.

Explanation of Local Expenditures: (Revised) *Surety Bond Requirements:* It is not known if there are any local government-run transportation providers that would be required to provide surety bonds for Medicaid participation.

Explanation of Local Revenues:

State Agencies Affected: PLA; FSSA; OMPP; AG.

Local Agencies Affected:

Information Sources: Marty Allain, Lisa Bentley, PLA; PLA website, *Indiana Handbook of Taxes, Revenues, and Appropriations*; December 7, 2009, FSSA - MCO contracts, CMS State Medicaid letters, and CMS Press Releases.

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